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physical integrity in the parts where the injury was manifested, still I think claimant may have compensation for the injury he suffered. I decide only the particular case, and in doing so decline to hold, upon this record, that claimant suffered from disease and not from accidental injury. See *Grove v. Michigan Paper Co.*, 184 Mich. 449, 151 N. W. 554.

MASSACHUSETTS SUPREME JUDICIAL COURT.

Shellfish From Contaminated Waters—Taking Prohibited—Massachusetts Law Upheld.

COMMONWEALTH *v.* FEENEY. (May 22, 1915.)

A Massachusetts law prohibited the taking of shellfish from waters which had been declared by the State board of health to be contaminated by sewage or otherwise. The court decided that the law was constitutional and valid.

The defendant was charged under Massachusetts R. L. (ch. 91, secs. 113, 114) with taking clams from flats in the city of Boston from which the taking of clams was prohibited by the commissioners on fisheries and game at the request in writing of the State board of health.

Section 113 referred to above reads as follows:

The State board of health may examine all complaints which may be brought to its notice relative to the contamination of tidal waters and flats in this Commonwealth by sewage or other causes, may determine, as nearly as may be, the bounds of such contamination, and if necessary mark such bounds. It may also in writing request the commissioners on fisheries and game to prohibit the taking from such contaminated waters and flats of any oysters, clams, quahogs, and scallops. Upon receipt of such request said commissioners shall prohibit the taking of such shellfish from such contaminated waters or flats for such period of time as the State board of health may prescribe.

[221 Massachusetts Reports, 323; 108 Northeastern Reporter, 1068.]

BRALEY, J. The facts not being in controversy, the question of the defendant's guilt or innocence depends upon the validity and meaning of R. L. c. 91, secs. 113, 114. The general right of the inhabitants from the earliest times to take within the flats and tidal waters of the Commonwealth, shellfish for the use of their families, while made subject to legislative regulations as to quantity, has never been denied. *Dill v. Wareham*, 7 Metc., 438, 446, 447; *Com. v. Bailey*, 13 Allen, 541; *Williams v. Delano*, 155 Mass., 10; 28 N. E. 1122; R. L. c. 91, secs. 100, 101, 102. But when, in the course of time, the density of population had so increased that certain portions of such waters and flats became impregnated with sewage or deleterious substances from manufacturing establishments, which affected and poisoned the imbedded shellfish, the legislature apparently for the protection and preservation of the public health enacted St. 1901, c. 133, now R. L. c. 91, sec. 113, authorizing the State board of health, upon complaint, to delimit the contaminated area, and authorizing the board to request, in writing, the commissioners on fisheries and game to prohibit the taking therefrom of oysters, clams, quahogs, and scallops. The commissioners upon receiving the request are required to prohibit the taking of shellfish from the waters thus designated during such period of time as the board shall have prescribed, although by St. 1907, c. 285, clams and quahogs may be taken for bait only, by any person having a permit in writing from the local board of health. See also St. 1911, c. 411, sec. 10. By section 114, upon the issuance and publication of the order of prohibition, its violation is made a misdemeanor punishable by fine. The statute is a valid exercise of the authority given by part 2, c. 1, sec. 4, of the constitution, to enact "all manner of wholesome and reasonable orders, laws, statutes, and ordinances," even if legislative functions to determine whether the conditions referred to in the statute exist, are conferred upon the State board of health, without giving to parties who may be interested an opportunity to appear and be heard. *Com. v. Sisson*, 189 Mass., 247, 252; 75 N. E. 619; 1 L. R. A. (N. S.) 752; 109 Am. St. Rep., 630.

But the defendant contends that, as the order which must define not only the location of the prohibited territory, but the duration of the prohibition, is dependent upon the terms of the "request," the order for the violation of which he has been convicted is void because the request is unlimited in time. The "period of time" is to be defined in connection with the subject matter and purpose of the statute, the wording of which assumes that the contamination ultimately may cease and the fishery may be safely resumed. It being impossible except from observation and experience to determine when this condition will appear, the board is only required to name definitely the date from which the prohibition is to begin, although it may remain in force until the board are satisfied that its continuance is no longer necessary. It, moreover, is only when the defendant has been deprived arbitrarily of taking uncontaminated shellfish for the sustenance of his family that he can complain of an invasion of his constitutional rights. The proceedings shown by the record having been in conformity with the statute, the defendant's first four requests were properly denied, and the fifth not having been argued is to be treated as waived. By the terms of the report the verdict is to stand, and it is so ordered.